

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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IVAN ESCOBAR, as an individual
and on behalf of all others
similarly situated,

Plaintiffs,

v.

CAPSTONE LOGISTICS, LLC, a
Delaware limited liability
company; and DOES 1 through 50,
inclusive

Defendants.

No. 2:20-cv-02501-WBS-JDP

MEMORANDUM AND ORDER RE:
PLAINTIFF'S MOTION TO REMAND

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Plaintiff Ivan Escobar ("plaintiff") brought this
action against Capstone Logistics, LLC ("Capstone") and Does 1
through 50, asserting violations of California Labor Code §
226(a) and California Labor Code § 2698, and purporting to sue on
behalf of himself and "[a]ll current and former employees of
Capstone in the state of California who were paid "Premium" wages
at any time between May 13, 2019, through the present." (See

1 Compl.) (Docket No. 1, at Ex. 1.)

2 Defendant Capstone removed the case to this court
3 asserting diversity jurisdiction under 28 U.S.C. § 1332(d)(2),
4 the Class Action Fairness Act of 2005 ("CAFA"). However, after
5 reviewing his arbitration agreement with defendant, which would
6 effectively bar any class claims, plaintiff filed a First Amended
7 Complaint ("FAC") which eliminated the class action claims and
8 solely asserts claims under the Private Attorneys General Act
9 ("PAGA"), California Labor Code § 2968, et seq. (See generally
10 First Am. Compl.) (Docket No. 12.) Before the court now is
11 plaintiff's Motion to Remand. (See Mot. to Remand.) (Docket No.
12 7.)

13 I. Factual and Procedural Background

14 Plaintiff Ivan Escobar was hired by Capstone on or
15 about April 13, 2020 as a Material Handler, and worked as an
16 hourly non-exempt employee. (See First Am. Compl. at ¶ 7.)
17 Capstone is a Delaware limited liability company that provides
18 supply chain management services, including transportation,
19 warehousing, and fulfillment services, to businesses throughout
20 the United States and California. (Id. at ¶ 9.) Plaintiff
21 contends that Capstone uniformly administered a corporate policy
22 and practice of failing to provide proper payroll records in
23 violation of California Labor Code § 226. (Id. at ¶ 16.)
24 Plaintiff states that when "premium" wages were paid, the wage
25 statements failed to identify the correct rates of pay and/or
26 hours worked. (Id. at ¶ 17.) He seeks penalties on behalf of
27 all aggrieved hourly employees who were paid "premium" wages from
28 May 13, 2019 through the present for Capstone's violations of

1 California Labor Code § 226(a). (Id. at ¶ 22.)

2 II. Discussion

3 Plaintiff does not dispute that there is complete
4 diversity between himself and the defendant. Although California
5 may be a real party in interest to a PAGA action because most of
6 the penalties recovered in a PAGA action ultimately accrue to the
7 California Labor Workforce & Development Agency, this does not
8 convert California into an actual party to all PAGA litigation.
9 See Archila v. KFC U.S. Props., Inc., 420 F. App'x 667, 668 (9th
10 Cir. 2011). However, plaintiff argues that the court lacks
11 diversity jurisdiction under 28 U.S.C. § 1332 because after the
12 dismissal of his class claims the amount in controversy does not
13 exceed \$75,000, exclusive of interests and costs.¹

14 The amount in controversy includes "all relief claimed
15 at the time of removal to which the plaintiff would be entitled
16 if [he] prevails." See Chavez. v. JPMorgan Chase & Co., 888 F.3d
17 413, 418 (9th Cir. 2018). To determine the amount in
18 controversy, courts must first look to the face of the pleadings.
19 See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283,
20 289-90 (1938).

21 Where, as here, it is unclear from the face of the
22 complaint whether the amount in controversy exceeds \$75,000, "the
23 removing defendant bears the burden of establishing, by a
24 preponderance of the evidence, that the amount in controversy

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26 ¹ Although defendant did not address this issue at the
27 hearing on this motion, and seemed to concede that the court had
28 only supplemental jurisdiction over plaintiff's PAGA claims, this
issue was mentioned at length in the parties' motions and will
accordingly be addressed here.

exceeds the jurisdictional threshold.” See Urbino v. Orkin Servs. of Cal., Inc., 726 F.3d 1118, 1121-22 (9th Cir. 2013). The amount in controversy may include “damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys’ fees under fee shifting statutes.” See Gonzalez v. CarMax Auto Superstores, LLC, 840 F.3d 644, 648 (9th Cir. 2016). Conclusory allegations as to the amount in controversy are insufficient. See Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770, 774 (9th Cir. 2017). In assessing the amount in controversy, the court may consider allegations in the complaint and in the notice of removal, as well as summary-judgment type evidence relevant to the amount in controversy.² See Chavez, 888 F.3d at 416 (internal citations omitted).

Under PAGA, civil penalties recovered by aggrieved employees are distributed as follows: “75 percent to the Labor and Workforce Development Agency [“LWDA”] and 25 percent to the aggrieved employees.” Cal. Lab. Code § 2699(i). In Urbino, the Ninth Circuit made clear that the “amount in controversy” in PAGA

² Defendant has submitted factual allegations regarding the number of “premium” wage statements that were paid to plaintiff, the number of non-exempt employees in California paid “premium” wages, and the number of wage statements issued to those employees which reflected “premium” wages, supported by a declaration from defendant’s payroll manager, Megan Nagel, under penalty of perjury. (See Opp’n to Mot. to Remand at Ex. 2, Decl. of Meghan Nagel in Support of Opp’n to Mot to Remand (“Nagel Decl.”) (Docket No. 11).) This type of evidence has previously been found sufficient to support removal. See Jones v. Tween Brands, Inc., No. 2:14-cv-1631-ODW (PLAx), 2014 WL 1607636 at *3 (C.D. Cal. Apr. 22, 2014); Muniz v. Pilot Travel Ctrs. LLC, No. Civ. S-07-0325 FCD EFB, 2007 WL 1302504 at * 5 (E.D. Cal. May, 1, 2007).

1 only actions cannot be met by aggregating the penalties
2 recoverable on behalf of all aggrieved employees. See Urbino,
3 726 F.3d at 1122. Thus, the court cannot consider the recovery
4 that other aggrieved employees would receive in assessing the
5 amount in controversy.

6 However, district courts in California have disagreed
7 as to whether the LWDA's portion of potential PAGA penalties can
8 be aggregated with an individual plaintiff's portion of the
9 penalties to satisfy the amount in controversy requirement.
10 Compare e.g. Hesselink v. Am. Family Life Assurance Co. of
11 Columbus, Case No. SACV 20-02051-CJC (DFMx), 2020 WL 7768711,
12 (S.D. Cal. Dec. 30, 2020) at *3 (holding that the state's 75%
13 share cannot be aggregated with the plaintiff's); Steenhuyse v.
14 UBS Fin. Servs., Inc., 317 F. Supp. 3d 1062, 1069 (N.D. Cal.
15 2018) (same); Willis v. Xerox Bus. Servs. LLC, No. 1:13-cv-01353-
16 LJO-JLT, 2013 WL 6053831 at *8-9 (E.D. Cal. Nov. 15, 2013) (same);
17 Lopez v. Source Interlink Cos., Inc., No. 2:12-cv-00003-JAM-CKD,
18 2012 WL 1131543, *3 (E.D. Cal. Mar. 29, 2012) (same), with e.g.,
19 Patel v. Nike Retail Servs., Inc., 58 F. Supp. 3d 1032, 1046
20 (N.D. Cal. 2014) (holding that the state's 75% share can be
21 aggregated with an individual plaintiff for purposes of
22 satisfying the amount in controversy); Mitchell v. Grubhub Inc.,
23 Case No. CV 15-05465-BRO (ASx), 2015 WL 5096420, *5 (C.D. Cal.
24 Aug. 28, 2015) (same).

25 The conflicting conclusions reached by the various
26 district courts are due to differing interpretations of Urbino.³

27 ³ Defendant relies extensively on Thomas v. Aetna Health
28 of California, Inc., No. 1:10-cv-01906-AWI-SKO, 2011 WL 2173715,

1 In Urbino, the defendants contended that the interest asserted by
2 the plaintiff was not his individual interest but rather the
3 state's collective interest in enforcing its labor laws through
4 PAGA. See Urbino, 726 F.3d at 1122-23. The Ninth Circuit
5 responded:

6 To the extent Plaintiff can, and does, assert
7 anything beyond his individual interest, however,
8 we are unpersuaded that such a suit, the primary
9 benefit of which will inure to the state,
10 satisfies the requirements of federal diversity
11 jurisdiction. The state, as the real party in
12 interest, is not a 'citizen' for diversity
purposes. See Navarro Sav. Ass'n v. Lee, 446
U.S. 458, 461 (1980) (courts 'must disregard
nominal or formal parties and rest jurisdiction
only upon the citizenship of real parties to the
controversy.'). . .

13 See id.

14 "This language implies that, whether the state is
15 deemed a nominal party or a real party in interest, its interest
16 is not to be considered." See Hesselink, 2020 WL at *3. The
17 Urbino court explained that when determining the amount in
18 controversy, aggregation of claims is appropriate "when neither
19 [party] can enforce [the claim] in the absence of the other."
20 Urbino, 726 F.3d 1122. However, PAGA "permits either the LWDA or
21 the aggrieved employees to act independently to enforce the Labor
22 Code." See Hesselink, 2020 WL at *3. In addition, the position
23 advocated by defendant here -- that the plaintiff in a PAGA claim
24 pursues a common and undivided claim in his role as a proxy for
25 the state and that the amount in controversy should include the

26 at * 19 (E.D. Cal. Jun. 2, 2011) and Schiller v. David's Bridal,
27 Inc., 2010 WL 2793650-AWI-SKO, at * 8 (E.D. Cal. July 14, 2010).
28 However, because both cases pre-date Urbino, the court finds them
inapposite here.

1 total civil penalties sought in the action -- was asserted
2 forcefully by the Urbino dissent but ultimately not adopted by
3 the panel. Thus, Urbino's language leads this court to conclude
4 that the LWDA's penalties should not be aggregated with
5 plaintiff's penalties to determine the amount in controversy.⁴

6 Plaintiff received nine wage statements reflecting
7 "Premium" wages during his employment tenure. (See Opp'n to Mot.
8 to Remand at Ex. 2, Nagel Decl. at ¶ 5.) Plaintiff states that
9 the maximum amount of penalties to which he may be entitled is
10 \$562.50, assuming a PAGA penalty of \$250 per wage statement for
11 "initial violations" and considering the 75% share of penalties
12 that would go to the LWDA. (See Reply in Supp. of Mot. to Remand
13 at 5.) (Docket No. 13.)⁵ This does not come close to the \$75,000
14 amount in controversy requirement for diversity jurisdiction,
15 even if the court were to consider attorney's fees. Because
16 plaintiff's claims fall short of satisfying the amount in
17 controversy requirement, the court concludes that there is no
18 traditional diversity jurisdiction under 28 U.S.C. § 1332.

19 Nevertheless, because the court originally had

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21 ⁴ Defendant suggests that Sakkab v. Luxottica Retail N.
22 Am., Inc., 803 F.3d 425, 427-440 (9th Cir. 2015) has called into
23 question the continuing validity of Urbino. However, Sakkab
24 never mentioned Urbino in its analysis and dealt with the issue
25 of whether the Federal Arbitration Act preempted the bar on the
waiver of representative claims under PAGA. See id. Defendant
has cited no case law to support this proposition. Accordingly,
the court does not agree that Sakkab has called into question the
validity of Urbino.

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27 ⁵ Defendant has not contested plaintiff's calculation of
28 his individual penalties or the idea that there would only be
penalties for initial violations.

1 diversity jurisdiction over plaintiff's CAFA claim at the time of
2 removal, defendant asks the court to retain supplemental
3 jurisdiction over plaintiff's remaining PAGA claim under 28
4 U.S.C. § 1367. See Echevarria v. Aerotek, Inc., 814 F. App'x
5 321, 322 (9th Cir. 2020). Federal courts have "supplemental
6 jurisdiction over all other claims that are so related to claims
7 in the action within such original jurisdiction that they form
8 part of the same case or controversy under Article III of the
9 United States Constitution." 28 U.S.C. § 1367(a). But a
10 district court "may decline to exercise supplemental jurisdiction
11 . . . [if] the district court has dismissed all claims over which
12 it has original jurisdiction." 28 U.S.C. § 1367(c); see also
13 Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 n.3 (9th Cir.
14 1997) (en banc) (explaining that a district court may decide sua
15 sponte to decline to exercise supplemental jurisdiction).

16 The Supreme Court has stated that "in the usual case in
17 which all federal-law claims are eliminated before trial, the
18 balance of factors to be considered under the pendent
19 jurisdiction doctrine--judicial economy, convenience, fairness,
20 and comity--will point toward declining to exercise jurisdiction
21 over the remaining state-law claims." Carnegie-Mellon Univ. v.
22 Cohill, 484 U.S. 343, 350 n.7 (1988).

23 Here, comity weighs in favor of declining to exercise
24 supplemental jurisdiction over plaintiff's remaining state law
25 claim because the state court is competent to hear such claims
26 and may have a better understanding of the relevant state law.
27 As for judicial economy, this action was removed to this court
28 only a little over two months ago and is still in its early


1 stages. Judicial economy does not weigh in favor of exercising
2 supplemental jurisdiction.

3 Lastly, convenience and fairness do not weigh in favor
4 of exercising supplemental jurisdiction. The federal and state
5 fora are equally convenient for the parties. There is no reason
6 to doubt that the state court will provide an equally fair
7 adjudication of the issues. Accordingly, the court declines to
8 exercise supplemental jurisdiction and will remand plaintiff's
9 remaining state law claim.

10 IT IS THEREFORE ORDERED that this case be, and the same
11 hereby is, REMANDED to the Superior Court of California, in and
12 for the County of San Joaquin. The Clerk of this Court shall
13 forward a copy of this Order to the Clerk of the Superior Court
14 of California, in and for the County of San Joaquin.

15 IT IS SO ORDERED.

16 Dated: March 9, 2021


17 WILLIAM B. SHUBB
18 UNITED STATES DISTRICT JUDGE
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